

REMARKS

The Applicants' note with appreciation the Examiner's identification of allowable subject matter recited in Claims 4-24. The following amendment amends Claim 25 to address the Examiner's claim objection and cancels Claims 41-44, 47-60, and 63-72 without prejudice. Now in the application are Claims 1-28 and 31-40, of which Claims 1, 8, and 25, are independent. No new matter is added and no new issues are raised. The following comments address all stated grounds for rejection and place the presently pending claims, as identified above, in condition for allowance.

Claim Objection:

Claims 25 stands objected for a typographical error. Applicants' amend Claim 25 by this amendment to correct the typographical error identified by the Examiner. Accordingly, Applicants' request the Examiner to reconsider and withdraw the objection to Claim 25.

Duplicate Claims:

The Examiner in the Office Action advises Applicants' that should Claims 25-28 and 31-40 be found allowable, the Examiner will issue a claim objection under 37 CFR 1.75 objecting to Claims 41-44, 47-60 and 63-72 as being substantial duplicates of Claims 25-28 and 31-40. Applicants' respectfully disagree with the Examiner's assertion that Claims 41-44, 47-60 and 63-72 are duplicative. Nevertheless, Applicants' cancel Claims 41-44, 47-60, and 63-72 without prejudice and reserve the rights to pursue similar subject matter in another application in order to advance prosecution of the subject application in an expedited manner.

Claim Rejections under 35 U.S.C. § 112

A. Rejection of Claims 25-28, 31-44, 47-60, and 63-72 under 35 U.S.C. § 112:

Claims 25-28, 31-44, 47-60 and 63-72 are rejected under 35 U.S.C. § 112, first paragraph for failing to comply with the written description requirement. Specifically, the Examiner contends that in Claim 25 and dependent claims therefrom, the limitation "the radiator means having a plurality of portions each corresponding to each of the cells to form a plurality of

radiator plates having different heat capacities” does not appear in the original disclosure. In similar fashion, the Examiner contends that in Claim 41 and dependent claims thereof, the limitation “the radiator means having a plurality of portions each corresponding to each of the cells to form a plurality of radiator plates having different heat capacities” does not appear to be in the original disclosure. Likewise, the Examiner contends that in Claim 57 and dependent claims therefrom, the limitation “wherein the portions have different heat capacities according to a heat load of the corresponding cell to form a plurality of radiator plates having different heat capacities” does not appear to be in the original disclosure.

Applicants’ respectfully disagree with the Examiner’s contentions that the claimed subject matter in Claims 25-28, 31-44, 47-60, and 63-72 is not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors’, at the time the application was filed, had position of the claimed invention. Applicants’ direct the Examiner’s attention to original Claim 13 and to page 13, lines 1-34 of the specification for a discussion of the recited radiator means. Accordingly, Applicants’ respectfully request the Examiner to reconsider and withdraw the rejection of Claims 25-28, 31-44, 47-60 and 63-72 under 35 U.S.C. § 112, first paragraph.

B. Rejection of Claims 25-28, 31-44, 47-60, and 63-72 under 35 U.S.C. § 112:

Claims 25-28, 31-44, 47-60, and 63-72 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants’ regard as their invention. Applicants’ amend Claims 25, 41, and 57 to replace the term “others” with the phrase “other cells”. With these amendments to Claims 25, 41, and 57 Applicants’ contend that Claims 25-28, 31-44, 47-60 and 63-72 are definite and particularly point out and distinctly claim the subject that Applicants’ regard as their invention. Accordingly, Applicants’ respectfully request the Examiner to reconsider and withdraw the rejection of Claims 25-28, 31-44, 47-60 and 63-72 under 35 U.S.C. § 112, second paragraph.

Claim Rejections under 35 U.S.C. § 102

Rejection of Claims 1 and 2 under 35 U.S.C. § 102(e):

The Office Action rejects Claims 1 and 2 as being anticipated by U.S. Patent No. 6,537,694 of Sugiura, *et al.* (hereinafter "Sugiura"). Applicants' respectfully traverse this rejection in light of the enclosed Declaration pursuant to 37 C.F.R. § 1.132 to establish the patentability of Claims 1 and 2 now pending in this application.

Applicants' contend that the Sugiura reference includes a common inventor Kazuyuki Sakakibara and assignee, Makita Corporation with the instant application and that the subject matter disclosed but not claimed in the Sugiura reference was derived from the common inventor identified in the instant application. Applicants' assert that Kazuyuki Sakakibara conceived or invented the subject matter disclosed in the Sugiura reference and relied upon by the Examiner to reject Claims 1 and 2 of the instant application. Accordingly, Applicants' contend that the submitted Declaration pursuant to 37 C.F.R. § 1.132 overcomes the rejection of Claims 1 and 2 as being anticipated by the Sugiura reference by establishing fact that the subject matter relied on in the Sugiura reference was the invention of one of the Applicants' in the instant application.

Accordingly, Applicants' respectfully request the Examiner to reconsider and withdraw the rejection of Claims 1 and 2 under 35 U.S.C. §102(e).

Nonstatutory Double Patenting Rejection

Claims 1-3, stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claim 8 of U.S. Patent No. 6,566,005 of Shimma, *et al.* Applicants file herewith a terminal disclaimer in compliance with 37 C.F.R. 1.321. Accordingly, Applicants' request the Examiner to reconsider and withdraw the rejection of Claims 1-3 under the judicially created doctrine of obviousness-type double patenting.

CONCLUSION

In view of the amendments and remarks set forth above, Applicants contend that Claims 1-28 and 31-40 are presently pending in this application, are patentable, and in condition for allowance. If the Examiner deems there are any remaining issues, we invite the Examiner to call the undersigned at (617) 227-7400.

Respectfully submitted,

LAHIVE & COCKFIELD, LLP

A handwritten signature in black ink, appearing to read "David R. Burns", is written over a horizontal line.

David R. Burns
Registration No. 46,590
Attorney for Applicants

28 State Street
Boston, MA 02109
(617) 227-7400
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